



BILLING CODE: 4410-09-P

**DEPARTMENT OF JUSTICE
Drug Enforcement Administration**

**Prianglam Brooks, N.P.
Decision and Order**

On April 14, 2015, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Prianglam Brooks, N.P. (Respondent), of Houston, Texas. GX 1, at 1. The Show Cause Order proposed the revocation of Respondent's DEA Certificate of Registration MB1907611, which authorizes her to dispense controlled substances in schedules III through V as a mid-level practitioner, as well as the denial of any pending applications to renew or modify her registration and any applications for any other DEA registration, because she does "not have authority to handle controlled substances in the State of Texas, the [S]tate in which" she is registered with DEA. *Id.* (citing 21 U.S.C. 802(21), 823(f) and 824(a)(3)).

More specifically, the Show Cause Order alleged that effective February 17, 2015, the Texas Board of Nursing (TBN) issued a summary suspension of Respondent's "nurse practitioner license" and her "Advanced Practice Registered Nurse License with Prescription Authorization," resulting in her loss of authority under Texas law "to handle controlled substances in the State of Texas." *Id.* The Order thus notified Respondent that her DEA registration was subject to revocation based upon her "lack of authority to handle controlled substances in the State of Texas." *Id.* (citing 21 U.S.C. 802(21), 823(f) and 824(a)(3)).

The Show Cause Order also notified Respondent of her right to request a hearing on the allegations or to submit a written statement while waving her right to a hearing, the procedure for electing either option, and the consequence for failing to elect either option. *Id.* at 2 (citing 21

CFR 1301.43). On April 29, 2015, a DEA Diversion Investigator personally served the Show Cause Order on Respondent. GX 4.

On May 18, 2015, the Office of Administrative Law Judges received a letter from an attorney representing Respondent. GX 5. Therein, Respondent waived her right to a hearing and provided a written statement of her position on the matters of fact and law asserted by the Government. GX 5, at 2-3.

On February 16, 2016, the Government submitted a Request for Final Agency Action along with the Investigative Record and Respondent's Statement of Position. Having considered the record in its entirety, I make the following findings of fact.

FINDINGS

Respondent is the holder of DEA Certificate of Registration MB1907611, pursuant to which she is authorized to dispense controlled substances in schedules III through V, as a mid-level practitioner, at the registered location of Prillenum Healthcare, 6260 WestPark Drive, Suite 260, Houston, Texas. GX 2. Her registration was last renewed in June 2014 and expires on July 31, 2017. *Id.*

Respondent is also the holder of Advanced Practice Registered Nurse License No. AP119040 with Prescription Authorization No. 10237 and Permanent Registered Nurse License No. 784525 issued by the Texas Board of Nursing. GX 3. However, on February 17, 2015, the Board ordered the temporary suspension of Respondent's licenses, finding that her continued practice as a nurse "constitutes a continuing and imminent threat to the public welfare." GX 3, at 1.

As support for its imminent threat finding, the Board found that Respondent, while employed as a family nurse practitioner and owner of Prillenum Healthcare, prescribed 8,614

dangerous cocktail drugs without therapeutic benefit and failed to individually assess each patient and develop an individualized treatment plan. *Id.* at 1-2 (citations omitted). The Board also found that “Respondent’s non-therapeutic prescribing practices constitute grounds for disciplinary action.” *Id.* at 2 (citations omitted).

The Board also found that “[o]n or about October 7, 2014 through December 12, 2014 . . . Respondent issued 410 prescriptions for hydrocodone, a Schedule II controlled substance, to patients not in a hospital setting or receiving hospice care.” *Id.* Finding that Respondent “does not have prescriptive authority to issue prescription for schedule II controlled substances,” the Board also found that “Respondent’s prescribing practice . . . places patients at risk and endangers public safety.” *Id.* The Board then alleged that Respondent’s prescribing of schedule II controlled substances constitutes grounds for disciplinary action. *Id.* (citations omitted).

The Board further found that Respondent owned and operated a pain clinic in violation of a state regulation, and that she issued prescriptions from a location not registered with the Texas Medical Board. *Id.* (citations omitted). The Board alleged that this conduct also constitutes grounds for disciplinary action. *Id.*

The Board’s Order mandated that both a probable cause hearing and a final hearing on the matter be conducted within 60 days of the entry of its order. *Id.* at 3. According to Respondent’s statement, a hearing was held on April 7, 2015, at which a state administrative law judge “extended the temporary suspension finding probable cause of a continuing and imminent threat to the public safety.” GX 5, at 2. According to an online query of the Board’s website, all of Respondent’s licenses remained suspended as of the date of this Order. *See* <http://www.Board.texas.gov/forms/apnrslt.asp>.

In her Statement, Respondent contends that the Show Cause Order mischaracterizes the Board's temporary suspension as a "summary suspension." GX 5, at 2. Respondent argues that the Board's February 17, 2015 temporary suspension was imposed "prior to notice and hearing." *Id.* While Respondent acknowledges that the Board provided her with "a probable cause hearing," after which it found that she poses "a continuing and imminent threat to the public safety" and thus continued the suspension," she argues that "this is not a final order" and that a final hearing "has yet to be scheduled." *Id.* (citation omitted).

Respondent admits that she is not currently authorized to prescribe any medications in Texas. *Id.* at 3. She contends, however, that because the temporary suspension "is not a final order" of the Board, DEA's authority under 21 U.S.C. 824(a)(3) must be considered in light of the its authority under subsection 824(d), the provision which authorizes the Attorney General to suspend a registration based upon a finding of imminent danger to public health or safety. *Id.* Respondent thus argues that because a suspension under section 824(d) "runs until the conclusion of such proceeding, including judicial review, . . . the principle of comity . . . suggest[s] that while a suspension of [her] registration may be appropriate [contingent on the outcome of the Board proceeding], a revocation is not appropriate." *Id.*

DISCUSSION

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823 of this title, "upon a finding that the registrant . . . has had [her] State license . . . suspended . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances." Also, DEA has long held that the possession of authority to dispense controlled substances under the laws of the State in

which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner's registration. *See, e.g., Frederick Marsh Blanton*, 43 FR 27616, 27617 (1978) ("State authorization to dispense or otherwise handle controlled substances is a prerequisite to the issuance and maintenance of a Federal controlled substances registration."); *James L. Hooper*, 76 FR 71371 (2011), *pet. for rev. denied*, 481 Fed. Appx. 826 (4th Cir. 2012).

This rule derives from the text of two provisions of the Controlled Substances. First, Congress defined "the term 'practitioner' [to] mean[] a . . . physician . . . or other person licensed, registered or otherwise permitted, by . . . the jurisdiction in which [s]he practices . . . to distribute, dispense, [or] administer . . . a controlled substance in the course of professional practice." 21 U.S.C. 802(21). Second, in setting the requirements for obtaining a practitioner's registration, Congress directed that "[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which [s]he practices." 21 U.S.C. 823(f). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the Act, DEA has long held that revocation of a practitioner's registration is the appropriate sanction whenever she is no longer authorized to dispense controlled substances under the laws of the State in which she practices medicine. *See, e.g., Calvin Ramsey*, 76 FR 20034, 20036 (2011); *Sheran Arden Yeates, M.D.*, 71 FR 39130, 39131 (2006); *Dominick A. Ricci*, 58 FR 51104, 51105 (1993); *Bobby Watts*, 53 FR 11919, 11920 (1988).

This is so even where, as here, the state board has imposed a suspension of a practitioner's dispensing authority prior to providing a hearing and the practitioner has yet to be afforded the opportunity to challenge the basis of the state board's action. *See, Ramsey* 76 FR at 20036 (citations omitted). As the Agency previously explained: "Under the CSA, it does not

matter whether the suspension is for a fixed term or for a duration which has yet to be determined because it is continuing pending the outcome of a state proceeding. Rather, what matters – as DEA has repeatedly held – is whether Respondent is without authority under [state] law to dispense a controlled substance.” *Bourne Pharmacy, Inc.*, 72 FR 18273, 18274 (2007) (citation omitted). Cf. *James L. Hooper*, 76 FR 71371 (2011) (collecting cases); *Blanton*, 43 FR 27616 (1978) (revoking registration of physician whose medical license had been suspended for one year, but thereafter, would have his license restored subject to probationary conditions; “[a]s a result of the suspension of his medical license, the [r]espondent is no longer authorized to dispense or otherwise handle controlled substances under the laws of Florida. Accordingly . . . the [r]espondent’s DEA registration must be revoked”). See also *Rezik A. Saqer*, 81 FR 22122, 22126 (2016).

Because the CSA clearly makes the possession of state authority a condition for maintaining a practitioner’s registration, it is of no consequence that the Texas Board’s temporary suspension order is not a final order of the Board. As for her contention that the principle of comity suggests that I should impose a suspension rather than a revocation, revoking her registration in no manner interferes with the Texas Board’s authority to adjudicate the allegations it has raised against her.¹ Respondent remains free to challenge the allegations raised by the State before the Board, and in the event she prevails, she can immediately apply for a new DEA registration.

¹ Respondent’s invocation of 21 U.S.C. 824(d) provides no support for her contention that comity suggests that I suspend rather than revoke her registration. That provision governs the exercise of the Agency’s authority to immediately suspend a DEA registration, “simultaneously with the institution of proceedings under” section 824(a), based upon a finding that a registrant poses “an imminent danger to public health or safety.” The provision says nothing about the Agency’s authority where a registrant’s state authority has been suspended prior to hearing. Section 824(a) does, however, and while it provides the Attorney General with discretionary authority to suspend or revoke upon making one or more of the five enumerated findings, for the reasons explained above, the specific provisions that apply to practitioners establish that a registrant who loses her state authority no longer meets the definition of a practitioner and cannot retain her registration even in a suspended status.

Accordingly, because it is undisputed that Respondent's Texas Advanced Practice Nursing License and Prescription Authority remains suspended, I find that she no longer has authority under the laws of Texas, the State in which she is registered, to dispense controlled substances. Therefore, she is not entitled to maintain her DEA registration. Accordingly, I will order that her registration be revoked and that any pending applications be denied.

ORDER

Pursuant to the authority vested in me by 21 U.S.C. 823(f) and 824(a), as well as 28 CFR 0.100(b), I order that DEA Certificate of Registration MB1907611, issued to Prianglam Brooks, N.P., be, and it hereby is, revoked. I further order that any application of Prianglam Brooks, N.P., to renew or modify this registration, be, and it hereby is, denied. This Order is effective immediately.²

Dated: June 27, 2016.

Chuck Rosenberg,
Acting Administrator.

² For the same reasons which led the Nursing Board to conclude that the continued practice of nursing by Respondent constitutes "a continuing and imminent threat to public welfare" and to order the summary suspension of Respondent's licenses, I conclude that the public interest necessitates that this Order be effective immediately. 21 CFR 1316.67.

